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Thirty-third session

SUMMARY RECORD OF THE 693rd MEETING

Held at Headquarters, New York,
on Thursday, 22 June 2000, at 3 p.m.

Chairman: Mr. Jeffrey CHAN (Singapore)

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The meeting was called to order at 3.05 p.m.

DRAFT CONVENTION ON ASSIGNMENT OF RECEIVABLES (continued) (A/CN.9/466, 470 and 472 and Add.1-4; A/CN.9/XXXIII/CRP.4 and 6-8)

1. Mr. TELL (France), replying to a statement made at the previous meeting by the United Kingdom representative, said that under the French Constitution, any international instrument ratified by France prevailed over national law. Thus, a provision like the one contemplated in paragraph 104 of document A/CN.9/470 would supersede the general principles of contract law in the French Civil Code. The fear expressed by the representative of Spain that the wording proposed by the German delegation would conflict with national law could just as easily be expressed with regard to the Secretariat suggestion. The only difference was that, under the German proposal, the possibility for the debtor to terminate the contract would be subject to the condition that there was a grave material breach of the contract.

2. It was one thing to state that the debtor did not have the right to avoid the contract on the ground that an anti-assignment clause had been violated; it was another thing to state, as in draft article 11, that the assignment of a receivable was effective notwithstanding the violation of any anti-assignment clause. For that reason, his delegation proposed that the following should be inserted after article 11 (1): "The avoidance of the original contract by virtue of such an assignment has no effect, in particular, on the rights acquired by the assignee against the debtor."

3. Ms. WALSH (Observer for Canada) said that she shared the concerns expressed by previous speakers with regard to the wording proposed by the German delegation and believed that paragraph 104, as drafted, adequately expressed the underlying idea of draft articles 11 and 12.

4. Mr. COHEN (United States of America) said that, while his delegation also supported the policy reflected in paragraph 104, it was mindful of the numerous problems identified by some delegations which were not comfortable with that paragraph without fuller explanation. Many of those problems arose from long-term contracts where the assignor might owe some obligations to the debtor. While some delegations had pointed out earlier that the draft Convention dealt only with assignment of receivables and not with delegation of duties, many contracts combined both and used "assignment" as a blanket term.

5. In order to clarify the intention in paragraph 104, his delegation proposed that in the bracketed part of the fourth sentence of that paragraph, after the words "(or that the debtor may not declare the original contract avoided on the sole ground that the assignor violated an anti-assignment clause", the following should be inserted: "unless the assignment materially impairs the debtor's ability to obtain performance owed to the debtor under the original contract. An assignment merely of the assignor's right to payment, and that has not delegated any duties owed to the debtor by the assignor, does not materially impair the debtor's ability to obtain performance owed to the debtor under the original contract".

6. The CHAIRMAN said he was not certain that the United States proposal was consistent with the Secretariat's proposal. He also requested the United States delegation to consider whether its proposal addressed the concerns expressed by the French delegation.

7. Mr. DOYLE (Observer for Ireland) expressed appreciation to the French delegation for attempting to move the issue along. Nevertheless, he failed to see how it would be possible to avoid the original contract and preserve the assignee's rights against the debtor. It was his understanding that the assignee's rights depended on the original contract. If there was no original contract, it was unclear how there could be a valid assignment.

8. All delegations understood that draft article 11 would present difficulties for certain delegations. If, however, there was a consensus in the Commission that the draft article was broadly acceptable, then those delegations, which included his own, would have to accept it.

9. With regard to the United States proposal, it was his understanding that draft article 11 dealt only with rights of payment. The only thing that the assignee wished to gain through assignment was the right to payment and the only concern of the debtor was the transfer of the duty to pay. He failed to grasp why it was necessary to deal with performance rights at all, and he therefore supported the Secretariat's proposal.

10. Mr. MORÁN BOVIO (Spain) said that he was almost fully in agreement with the statement made by the observer for Ireland. It was important to draw a distinction between the text proposed by the Secretariat, which was limited and very specific, and the proposal made by the German delegation, which would fully open up the possibility of avoidance of the contract based on how the anti-assignment clause was classified. The French proposal was therefore inadequate. As to the United States proposal, it could be included in the commentary, but he was in favour of leaving paragraph 104 as drafted.

11. Mr. FERRARI (Italy) said that, like the observer for Ireland, he did not believe that performance rights should be addressed and did not support the United States proposal. He agreed with the representative of Spain that the best way to deal with draft article 11 was to retain it as drafted or to insert in it wording from paragraph 104.

12. Ms. WALSH (Observer for Canada) said that she shared the concerns expressed by the observer for Ireland and the representative of Italy that the United States proposal might expand the intended scope of draft article 11.

13. Mr. FRANKEN (Germany) said that his delegation could accept either the United States proposal or the French proposal. If it was decided to retain the commentary, his delegation could also accept the wording proposed by the Secretariat in paragraph 104.

14. The CHAIRMAN said that a number of delegations strongly supported the Secretariat's proposal. Within that group, however, some delegations believed that the commentary should reflect certain views, while others wished to see a

paragraph (3) added to draft article 11 in order to reflect the understanding that draft article 11 was itself subject to certain exceptions.

15. Normally, in a situation where there was no consensus, the text would remain as drafted, but as there appeared to be different understandings of what draft article 11 (1) was intended to mean, he was reluctant to close the debate without a clear direction being taken by the Commission as a whole.

16. Mr. MORÁN BOVIO (Spain) said that in his opinion, the debate on the question was already closed. The German delegation had indicated that it had no difficulties with the text in paragraph 104 or with wording similar to what the United States delegation had proposed.

17. The CHAIRMAN said that it was necessary to clarify what was to remain in the commentary. The United States proposal was now supported by the German delegation, but that proposal differed somewhat from what was in paragraph 104. There was as yet no consensus on what policy was to be reflected in the commentary. He also wished to know whether there was any support for the French proposal.

18. Mr. COHEN (United States of America) said he agreed with the representative of Spain that the Commission was moving towards consensus on draft article 11 as supplemented by the Secretariat's point in paragraph 104. His delegation did not believe that its proposal was inconsistent with that paragraph; it was merely intended to explain the meaning of the phrase "on the sole ground". It was for the Commission to decide whether it preferred that phrase or the somewhat lengthy explanation proposed by his delegation. His delegation would be satisfied with either choice. It would be troubled, however, if draft article 11 was not supplemented by any of the wording in paragraph 104.

19. Mr. DESCHAMPS (Observer for Canada) requested the French delegation to clarify whether the effect of its proposal would be that, despite avoidance of the contract, the assignee could claim from the debtor receivables assigned under the assignment.

20. Mr. STOUFFLET (France) said it was his delegation's intention that, irrespective of possible avoidance, the assignee should retain all rights as against the debtor.

21. Mr. SALINGER (Observer for Factors Chain International) said that he wished to illustrate the point made by the observer for Ireland. If the assignee took assignment of the assignor's contract to sell goods over a period of a year, he would be selling one existing receivable and 11 future receivables. If the debtor was able to avoid the contract, his right to those future receivables must necessarily be affected. Accordingly, the French proposal did not resolve the issue. Either the debtor must not be allowed to avoid the contract, or, in the absence of agreement, the text should be left as it was.

22. Mr. DUCAROIR (Observer for the European Banking Federation) said that if the debtor was allowed to avoid the contract under the conditions proposed, the future assignment would have no effect on the assignee, who was frequently a

banker. He therefore shared the concerns expressed by the observer for Factors Chain International.

23. Ms. McMILLAN (United Kingdom) said that the current debate was very confusing. Her delegation supported the views expressed by the observers for Ireland and Factors Chain International. Either draft article 11 should be left as it was, or wording should be added to specify that the debtor could not declare the original contract avoided on the sole ground that the assignee had violated an anti-assignment clause. Anything more complicated would mean that the draft article would have no cost advantage at all, as it would simply give rise to litigation.

24. The CHAIRMAN said that, as there appeared to be no support for the French proposal, draft article 11 would remain as drafted. The only issue was how to explain it in the commentary. The United States delegation had suggested that its wording, to which the German delegation had agreed, could be combined with the Secretariat's proposal in paragraph 104.

25. Ms. WALSH (Observer for Canada) said it was clear from the debate that all that was required was to add the words proposed by the Secretariat to draft article 11.

26. Mr. FERRARI (Italy) said that the sentiment in the Commission was not as the Chairman had described. One delegation was in favour of the United States proposal; four had spoken against it; and one was in favour of the proposal in paragraph 104.

27. Mr. DOYLE (Observer for Ireland) said that he agreed with the three previous speakers and had no objection to the wording proposed by the United States being included in the commentary.

28. Ms. GAVRILESCU (Romania) said that her delegation, like those that had spoken previously, believed that draft article 11 should be supplemented by the Secretariat's proposal.

29. Mr. RENGER (Germany) said that his delegation could accept the Secretariat's proposal, provided that the wording proposed by the United States was included in the report and on the understanding that such wording did not affect the debtor's ability to obtain performance.

30. Mr. TELL (France) said that his delegation had always supported the text of draft article 11 and believed that its scope was clear. The debate had arisen because the Secretariat had put forward a proposal at such a late stage. His delegation's reservation concerning that proposal should be reflected in the summary record of the current meeting.

31. Mr. ATWOOD (Australia) said that his delegation supported the addition of the Secretariat's proposal to the wording in draft article 11.

32. The CHAIRMAN said he understood that the Commission wished the drafting group to incorporate the language suggested by the Secretariat in article 11 but to make clear that it was not intended to restrict any remedies the debtor might

have against the assignor for violation of an anti-assignment clause. The language proposed by the United States illuminating the distinction between right to payment and performance would be reflected in the commentary.

33. Mr. BAZINAS (Secretary of the Working Group on International Contract Practices) said that the decision just taken raised another question. Article 11 (1) related to anti-assignment agreements not only between the debtor and initial assignor but also between subsequent assignors and assignees. His question was whether the new rule that the original contract could not be avoided on the sole ground of violation of an anti-assignment clause should be extended to subsequent assignment contracts.

34. Mr. MORÁN BOVIO (Spain) said he thought that the rule should apply down the entire chain of contracts. If an assignee violated an anti-assignment clause in the assignment contract by assigning the receivables in turn, he might be liable for damages or other remedies for breach of contract, but the contract should not be avoidable on that sole ground.

35. The CHAIRMAN, hearing no other views, said he took it there was general agreement that the drafting group should devise language to reflect the policy just outlined.

36. He invited the Commission to turn its attention to article 12 of the draft Convention.

37. Mr. BAZINAS (Secretary of the Working Group on International Contract Practices) said that article 12 was intended to ensure that rights securing payment of the assigned receivable followed the receivable. Paragraph 1 implied that, if the right securing payment of the assigned receivable was an accessory right, it would follow the receivable without a new act of transfer. If it was an independent but transferable right, the assignor would have an obligation to make a new act of transfer. As explained in the commentary (A/CN.9/470, para. 105), whether the right was accessory or independent would be left to the law governing the right.

38. Paragraphs 2 and 3 followed the logic of article 11 and applied it to transfer of security rights, with the effect that an anti-assignment agreement would not invalidate the transfer of the security right, but liability for breach of the agreement under national law would be preserved. Paragraph 4 was intended to preserve the rights of a debtor in the case of a transfer of a possessory property right. Paragraph 5 was intended to ensure that requirements of form under the law applying to the security right were not interfered with.

39. In view of the decision to include an article on the law applicable to form, article 12 (5) might have to be aligned with article 25, so that, if a receivable was secured, the law governing the security right would govern matters of form, as opposed to the law of the assignor's location. Since the rule on form was formulated as a "safe harbour" rule, the Commission might think the point was already sufficiently clear. In any case, the matter might already have been clarified with respect to real property by the new rule regarding receivables arising from or secured by real estate.

40. Mr. MORÁN BOVIO (Spain) said that, for the sake of conciseness, the Commission should consider adopting the suggestion of the Secretariat, expressed in the last sentence of paragraph 105 of the commentary (A/CN.9/470), that the second part of the first sentence of article 12 (1) from the word "unless" to the end should be deleted. The words in question were clearly superfluous, since the meaning was contained in the sentence that followed.

41. The CHAIRMAN said that, since there were no objections, the matter could be referred to the drafting group.

42. Mr. FRANKEN (Germany) recalled that, while there had been general agreement on excluding financial contracts governed by netting agreements from the draft Convention, his delegation had raised some concerns about non-financial contracts governed by netting agreements in connection with articles 11 and 12. His delegation, together with the observer for Canada and with the help of the United States delegation, had elaborated the following proposal for a partial exclusion to deal with those concerns, possibly for inclusion in article 4:

> "In the case of receivables arising under contracts governed by netting agreements, article 11 and article 12, paragraphs 2 and 3, apply only to the assignment of a receivable owed to the assignor upon net settlement of payments due pursuant to the netting agreement."

The effect would be that only the net balance after offsetting, which could become a receivable by novation, and not the component receivables, would be subject to the above-mentioned provisions of articles 11 and 12.

43. The CHAIRMAN invited the Commission to consider whether the proposal was acceptable and, if so, where in the draft Convention it should be placed.

44. Mr. SALINGER (Observer for Factors Chain International) said that his organization had no wish to prevent the proper operation of netting agreements, but he was concerned that the definition was too wide. As it stood, a netting agreement could refer to an agreement between any two parties to run a current account with complete set-off of all transactions. Under the new proposal, they could decide to enter into an anti-assignment agreement that would be effective except for the net balance. If such was the case, the provisions of article 20 whereby an assignment could intervene in the rights of set-off of unconnected transactions would have no effect. Perhaps a better definition of a netting agreement, limiting it to an organized practice in a particular trade or market, might avoid the problem.

45. The CHAIRMAN said he assumed that the dissatisfaction of Factors Chain International with the definition of netting agreement related to commercial rather than financial transactions.

46. Mr. MORÁN BOVIO (Spain) said that the observer for Factors Chain International had made a pertinent point. When the Commission had settled on a definition of netting agreement, it had had in mind financial rather than commercial transactions. He would appreciate clarification as to whether, pursuant to the proposal, articles 11 and 12 would apply to balances under netting agreements.

47. Mr. BRINK (Observer for the European Federation of National Factoring Associations (EUROPAFACTORING)) said that his Association had acquiesced in the exclusion of receivables governed by netting agreements in the financial markets because those markets were well supervised. If the exemption for netting agreements was broadened to industry and commerce, however, any commercial entity would be able to escape from the effects of article 11, which would erode the very core of the draft Convention. An assignee that had paid money for a receivable might find himself unable to claim it, and, because of that uncertainty, be less willing thereafter to make such a transaction.

48. Commerce and small- and medium-sized enterprises, especially in developing countries, were in great need of receivables financing. The industries that typically used well-organized netting agreements would not be inconvenienced by article 11 because they did not need that type of financing and would not be assigning their receivables.

49. Mr. COHEN (United States of America) said that his delegation fully supported the policies embodied in articles 11 and 12. However, legitimate concerns had been raised about the effect of the articles on the assignment of receivables governed by netting agreements of a kind not excluded from the draft Convention. Serious problems could arise, particularly with multiple assignments, if parties assigned component receivables subject to a netting agreement, but no such problem would arise with the netted amount, and article 11 could apply. That was the thrust of the proposal formulated in the ad hoc meeting convened by the German representative and the observer for Canada.

50. The intent was to save factors or other receivables financiers from unpleasant surprises, not to put them at a disadvantage. Perhaps that problem could be addressed by adding language to the effect that the netting agreements meant were those referred to in the original contract or contract of assignment, so that the assignee had a means of knowing about them.

51. Mr. DESCHAMPS (Observer for Canada) said that a careful reading of the definition of netting agreement had convinced his delegation that a current account would not be a netting agreement within the meaning of the definition.

52. Mr. TELL (France) said he thought that the proposal for a partial exclusion needed to be made more specific by a more precise definition of netting agreement; otherwise little would be left to which article 11 applied.

The meeting was suspended at 4.35 p.m. and resumed at 5 p.m.

53. Mr. IKEDA (Japan) said that the principle underlying draft article 12 was that security rights should be treated in the same way as other receivables for the purpose of limitations on assignment. Draft article 12, paragraphs (1), (4) and (5), dealt with the kinds of security rights which might be affected by the assignment of a receivable. Only paragraphs (2) and (3) were relevant to contractual limitations on assignment. He therefore assumed that the proposal in document A/CN.9/XXXIII/CRP.8 would apply to draft article 11 and to paragraphs (2) and (3) of draft article 12. He was anxious to clarify the connection between that proposal and the Canadian-German proposal read out by

the German representative earlier in the meeting. It was certainly necessary to have a special rule for netting agreements relating to assignments of commercial receivables. However, the wording was problematic, since the proposal in document A/CN.9/XXXIII/CRP.8 was essentially a list of inclusions, whereas the new proposal was exclusionary.

54. Mr. SCHNEIDER (Germany), referring to the concern expressed by the observers for Factors Chain International and EUROPAFACTORING, said that the new proposal used the term "netting agreement" according to the definition in draft article 6 (m) (A/CN.9/XXXIII/CRP.2). A netting agreement was invariably an agreement among three or more parties; if there were only two parties to the transaction, there would be rights of set-off between the assignor and the debtor, but the resulting balance would not be one created by a novation. In order to clarify that point, he suggested the insertion in the new proposal, after "contracts governed by netting agreements", of the words "involving more than two parties".

55. The CHAIRMAN recalled that the question of the number of parties involved in those transactions had been resolved in the course of the discussion on interbank payments systems.

56. Mr. MORÁN BOVIO (Spain) welcomed the new proposal, which made clear that receivables arising under a netting agreement, which would itself be excluded by draft article 4, could be assigned and were fully covered by draft article 11 and also, as the representative of Japan had pointed out, by draft article 12, paragraphs (2) and (3). He welcomed the proposal read out by the representative of Germany. Netting agreements were commercial not financial transactions and did not take place between credit institutions. It might therefore be desirable to define them more closely, with a view to determining how receivables arising from them should be handled.

57. The CHAIRMAN said that the Commission appeared to have agreed to accept the additional wording and must now decide where to place it. The text should perhaps be framed so as to apply to all netting agreements in the ambit of the draft Convention.

58. Mr. BAZINAS (Secretary of the Working Group on International Contract Practices) suggested that the additional wording proposed by the representative of Germany could usefully be included in the definition of netting agreements appearing in draft article 5 (m).

59. Mr. SCHNEIDER (Germany) said that his intention was not to reopen the discussion on the definition of netting agreements but merely to clarify the thrust of the original proposal. However, he would have no objection to the insertion of the additional words in the definition of netting agreements in draft article 5 (m).

60. Mr. COHEN (United States of America) said that he was unwilling to alter the definition of netting agreements already decided upon. The Commission had discussed at length the exclusion of financial contracts subject to netting agreements and had decided on the definition to be used for that purpose. If it now altered the definition as a result of the additional wording suggested by

the representative of Germany, serious problems might arise concerning the scope of the draft Convention. He urged the Commission to accept the proposal in its original form.

61. Mr. BAZINAS (Secretary of the Working Group on International Contract Practices) said the observations by the representatives of Germany and the United States showed that the definition of netting agreements could be interpreted in different ways. A similar problem had arisen with the definition of interbank payments systems, and for that reason the Commission had decided not to include the definition proposed by the observer for the European Banking Federation. As a result, the question whether bilateral payments systems were covered by the exclusion in draft article 4 would be resolved by law outside the Convention. The difference of views concerning netting agreements and the number of parties involved could be addressed in the commentary to the draft articles, if the Commission so wished.

62. The CHAIRMAN said that the Commission would have to decide whether the same considerations as applied to interbank payments systems should also apply to netting agreements.

63. Mr. SCHNEIDER (Germany) explained that the balance formed by novation as the result of a netting agreement was a new receivable and had nothing in common with the receivables involved in the netting procedure. The mechanics of netting were described in document A/CN.9/472, footnote 2. That description showed that a netting arrangement would not work if only two parties were involved. He had the impression that for the factoring industry the term "netting agreement" as used in the draft articles was not clear enough. That was why he had suggested adding the words "involving more than two parties", which in his opinion would not affect the definition in draft article 5 (m).

64. The CHAIRMAN said that, since it was already clear that a netting agreement involved three or more parties, the addition would be simply for the avoidance of doubt.

65. Mr. ATWOOD (Australia) pointed out that the definition in draft article 5 (m) did not exclude an agreement between two parties only, since subparagraph (ii) referred to "a single payment by one party to the other".

66. Mr. COHEN (United States of America) said he wished to keep the definition as it stood. That definition was based on the comments by the European Banking Federation (A/CN.9/472/Add.1), which made no mention of three or more parties. The Commission had accepted the present definition for the purpose of excluding financial contracts based on netting agreements. The definition as it stood served the purpose of covering arrangements under different legal systems, some of which might provide for netting agreements between two parties only. If amended, it would not serve for the purpose of the exclusion.

67. Mr. DESCHAMPS (Observer for Canada) said it had been assumed during the Commission's discussions that it was not necessary for a contract to have more than two parties for it to qualify as a netting agreement. The definition of a netting agreement had been discussed in the context of agreements of the

International Swaps and Derivatives Association, which normally involved only two parties.

68. The CHAIRMAN suggested that the additional text proposed by the representative of Germany should apply only to commercial receivables.

69. It was so decided.

70. Mr. SALINGER (Observer for Factors Chain International), commenting on the United States proposal (A/CN.9/XXXIII/CRP.8), said he welcomed the fact that draft article 11 would not apply to factoring agreements. However, factoring agreements did not always apply to financial services; they were sometimes entered into in order to collect debts and protect assignors against bad debts. He proposed that the commentary to the draft articles would state that agreements for factoring or the discounting of receivables would be regarded as financial services for that purpose.

71. The CHAIRMAN said he took it that the Commission wished to accept that proposal.

72. It was so decided.

73. The CHAIRMAN suggested that the proposed exclusion should apply to draft article 12 (3).

74. It was so decided.

75. Mr. MORÁN BOVIO (Spain) drew attention to paragraph 108 of the commentary (A/CN.9/470), where it was suggested that if the Commission included a rule on the form of assignment of a receivable, the rule would need to be aligned with article 12 (5). He wondered whether it was necessary to alter paragraph 5, since the formulation of the rule in article 8 was broad enough.

76. Mr. BAZINAS (Secretary of the Working Group on International Contract Practices) recalled the Commission's decision that the form of an assignment should be covered by a "safe harbour" rule stating that the assignment of a receivable was valid as to form if it met the form requirements, if any, of either the law of the State in which the assignor was located or any other law applicable by virtue of the rules of private international law. In the case of assignment of a receivable secured by a mortgage, the applicable rules of private international law as to form should be sufficient to refer the matter to the law of the land.

77. The Commission's additions to article 4 dealt with priority and with the acquisition of a property right in real estate as a result of the assignment of a receivable related to that real estate. The new rule adopted under article 8, on the other hand, stated that if there were any form requirements as to an assignment, it would be sufficient to satisfy the law of the assignor, except where the receivable was mortgage-secured. The matter might therefore have to be addressed in article 12 (5). in order to make it clear that the form of a mortgage-secured assignment was subject to the law of the land.

78. Mr. MORÁN BOVIO (Spain) suggested that one could either add an exception in article 12 (5) for real-estate-based receivables, which were to be governed by the law of the land, or simply add a cross-reference to the other relevant provisions of the draft Convention.

79. Mr. BAZINAS, noting that article 12 (5) preserved the law applicable outside the Convention with regard to the form of assignments, said that the simplest course might be to state there that neither the new provisions in article 8 regarding form nor article 12 (1) affected any requirements of the applicable law.

80. Mr. DESCHAMPS (Observer for Canada) observed that the "safe harbour" rule in article 8 applied to a receivable itself, but his delegation was not at all sure that it could apply to the required formalities allowing an assignee to exercise his rights in respect of any property securing the receivable, which, moreover, might be governed not by the law of the assignor's location but by that of another State.

81. Mr. STOUFFLET (France) said he agreed with Canada that the Secretary's proposal needed clarification. Article 12 (5) was essential and very clear as it stood. What was not clear was the relationship to the latest version of article 8 (2).

82. Mr. BAZINAS (Secretary of the Working Group on International Contract Practices) observed that under the new article 8 rule it was sufficient if an assignee met the form requirements of the law of the assignor's location, but that the question then arose as to whether that would be sufficient for the transfer of a security right securing the receivable in question. That matter could be settled either by an explanation in the commentary on article 12 (5) or by adding in paragraph 5 itself the explanatory statement he had previously suggested. Article 12 (5) could stand as it was, except for the possible need for clarification.

83. Mr. DESCHAMPS (Canada) said that thus the intent of the addition the Secretary of the Working Group had proposed was to clarify that article 12 (5) would not defeat the purpose of new article 8 (2), which dealt only with the formal requirements for the assignment of a receivable, while article 12 (5) itself dealt with the formal requirements for transfer of security rights. He saw no inconsistency between the two provisions and no need to change article 12 (5). If, however, the Commission decided to amend article 12 (5) to eliminate any ambiguity, care should be taken not to weaken the new rule in article 8. It must remain clear that an assignee's right in respect of the receivable, was effective as soon as the formal requirements of the law of the assignor's location were fulfilled, even if the formal requirements for the transfer of the security rights were not yet met.

84. Mr. STOUFFLET (France) said that perhaps article 12 (5) and article 8 (2) should be kept as they were, each with its own clear purpose.

The meeting rose at 6 p.m.